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EXAMINER	
NEWLIN, TIMOTHY R	

ART UNIT	PAPER NUMBER
2623	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/001,298	BARRETT, PETER T.	
	Examiner	Art Unit	
	Timothy R. Newlin	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 March 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-25 and 28-34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-25 and 28-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1 and 25 have been considered but are moot in view of the new ground(s) of rejection.

With respect to claim 2, the applicant traverses the use of official notice based on the distinction between whether a web site *has* or *has not* been visited. This argument is not persuasive given the application of Macrae to claim 1, from which claim 29 depends. Macrae specifically meets the negative language "has not visited," as discussed below in the rejection of claim 1. Official notice is still relied on to the extent that claim 29 recites a web site, but not to meet the "not visited" limitation.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 3 recites the limitation "the primary content." There is insufficient antecedent basis for this limitation in amended claim 1, from which claim 3 depends.

4. Claims 4-7 recite the limitation "the second window." There is insufficient antecedent basis for this limitation in amended claim 1, from which the claims ultimately depend.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-4, 12, 13, 15, 16, 18, 21-25, and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander (US 6,177,931), in view of Macrae et al., US 6,745,391.

Considering claims 1 and 25, Alexander discloses a method using a computer readable medium, the method comprising: In a video receiver (television receiver, cable box) that is coupled to a display device (10 of figure 1), the video receiver configured to locally receive a stream that includes a plurality of video segments (see figures 1 and 3), a method of locally processing remotely issued instructions contained in the stream so that the video receiver can be used for targeting the plurality of video segments based on local information accessible to the video receiver and based on the remotely issued instructions (col. 33, lines 26-65), the method comprising the following:

locally monitoring state and user behavior characteristics associated with the video receiver (col. 33, lines 26-65);

locally storing the characteristics only at the video receiver (information of the last program the user was watching is stored in the EPG database of the video receiver—col. 33, lines 58-62);

locally receiving at the video receiver a plurality of video segment from the stream (see figures 1 and 3);

locally receiving at the video receiver remotely issued executable instructions from the stream, the remotely issued executable instructions configured to cause the video receiver to select a particular video segment from among the plurality of video segments based on the locally stored characteristics when the remotely issued executable instructions are locally processed by a processor at the video receiver (col. 32, lines 23-54 and col. 33, lines 26-65);

locally processing the remotely issued executable instructions using the locally stored characteristics to cause the video receiver to select the particular video segment (col. 32, lines 23-54 and col. 33, lines 26-65); and

causing the selected particular video segment (tailored advertisements—program related advertisement messages and virtual channel ads) to be displayed (see figures 1 and 3, col. 32, lines 23-54 and col. 33, lines 26-65).

Alexander does not teach monitoring whether a viewer is subscribed to a particular channel or targeting video segments based on that determination. Macrae does teach such a system, in connection with a programming guide that includes

promotional messages. A promotional "tile" is displayed to promote a free preview of a subscription channel to which a user is not already subscribed **[402, Fig. 5; 402, 410, 412, Fig. 6; col. 12, 59-67; claim 1, second limitation]**. It would have been obvious to one of ordinary skill in the art to modify Alexander with the teaching of Macrae, in order to specifically target prospects for a subscription channel rather than users who already subscribe. This avoids a) using bandwidth to transmit unnecessary promotions and b) confusing currently subscribed users with a message asking them to subscribe.

As to claim 2, Alexander discloses processing the executable instructions to cause the video receiver to select the video segment comprises processing the executable instructions to cause the video receiver to select a video advertisement (col. 32, lines 23-54 and col. 33, lines 26-65).

Considering claim 3, Alexander discloses causing the primary content to be displayed on the display device in accordance with a selection made by a viewer of the primary content (a viewer changes the channel to view a certain television program other than the one currently displayed—column 28, lines 30-52).

As to claim 4, Alexander further discloses displaying material outside of the second window (see information box 24 in figures 1 and 3).

Considering claim 5, Alexander discloses displaying material outside of the window comprises displaying television programming outside of the second window (the primary content is displayed in a first window 12 of the display device 10 of figure 1, which is outside of the second window. In addition program listings 22 of fig. 1 are effectively "television programming" outside of the second window).

With regards to claims 12, Alexander discloses caching the plurality of video segments as they are received (data that is received at any point in time is effectively *cached*—col. 32, lines 23-54 and col. 33, lines 26-65).

Regarding claim 13, Alexander discloses releasing the cache memory associate with a particular video segment if the video receiver determines that the particular video segment is not to be displayed (since memory has finite space, video segment that are not used are effectively removed at some point—col. 32, lines 23-54 and col. 33, lines 26-65).

Considering claim 15, Alexander discloses receiving a plurality of video segments from the video stream comprises:

receiving the plurality of video segments from a plurality of video streams (television programs and advertisements from head-ends); and

switching (by utilizing a change channel command) display between the plurality of video streams based on the executable instructions (col. 32, line 23 – col 33, line 65).

As to claim 16, Alexander discloses that the video stream is a unidirectional video stream (video is being sent downstream, and not upstream—col. 32, line 23 – col. 33, line 65).

With regards to claim 18, Alexander discloses that the locally stored characteristics include historical information about channels tuned to (information of the last program the user was watching is stored in the EPG database of the video receiver—col. 33, lines 58-62).

Regarding claim 21, Alexander discloses that the locally stored information includes historical information about advertisements displayed (col. 26, line 61 – col. 27, line 7).

Considering claim 22, Alexander discloses that the historical information about advertisements displayed comprises an identifier identifying at least some of the advertisements previously displayed (col. 28, lines 30-52).

As to claim 23, Alexander discloses that the historical information about advertisements displayed comprises a time that the corresponding advertisement was last displayed (col. 28, lines 30-52).

With regards to claim 24, Alexander discloses that the video receiver locally stores the characteristics without revealing the characteristics outside of the video receiver (met as discussed in claim 1).

Considering claim 28, Alexander discloses that the locally received data includes a list of video segments and a schedule of particular times video segments are to be displayed (see figures 1 and 3).

Regarding claim 29, Alexander is silent on identifying web sites not previously navigated. Official Notice is taken that targeting new content to viewers such as web sites is well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Alexander by identifying web sites not previously navigated in order to suggest and recommend new content to the user.

Regarding claim 31, official notice is taken that it would be obvious to one skilled in the art that the video segment should advertise the same product as the web site in order to coordinate the marketing message.

Regarding claim 32, Macrae discloses a method wherein the selection of the particular video segment is based solely on a determination that the user of the video receiver is not already subscribed to receive the particular channel **[claim 1, second limitation]**.

3. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander and Macrae as cited above in view of Knudson (US 2005/0216936).

Regarding claim 6, Knudson discloses displaying material outside of the window comprises displaying network resources outside of the second window (applicant defines network as Web pages "network resources such as Web pages". Knudson discloses users ordering information, products, or services through the Internet [0049]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Alexander to include displaying network resources outside of the second window, as taught by Knudson, for the benefit of providing additional display features to the user.

Considering claim 7, it is met by the combination of Alexander and Knudson. In particular, Knudson discloses displaying material outside of the window comprises displaying Web content outside of the second window (see claim 6).

4. Claims 8 – 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Alexander and Macrae as cited above in view of Ching et al. (US 2001/0003184).

As to claim 8, Alexander fails to explicitly disclose causing a still picture to be displayed on the display device when the video segment is not being displayed on the display device.

In analogous art, Ching discloses causing a still picture to be displayed on the display device when the video segment is not being displayed on the display device [0128].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Alexander to include causing a still picture to be displayed on the display device when the video segment is not being displayed on the display device, as taught by Ching, for the benefit of enabling the user to view an advertisement while waiting for a video stream (Ching—[0128]).

With regards to claim 9, it is met by the combination of Alexander and Ching. In particular, Ching discloses receiving the still picture from the stream (Ching—[0128]).

Regarding claim 10, it is met by the combination of Alexander and Ching. In particular, Ching discloses causing a still picture to be displayed on the display device in the window when the video segment is not being displayed on the display device

comprises causing a banner advertisement to be displayed on the display device in the window when the video segment is not being displayed on the display device (Ching—[0128]).

Considering claim 11, although the Alexander in view of Ching does not specifically disclose that the executable instructions are first executable instructions, wherein the method further comprising: receiving second executable instructions from the video stream, the second executable instructions configured to cause the video receiver to select the still picture from among a plurality of still pictures based on the locally stored characteristics when the second executable instructions are processed by a processor; processing the second executable instructions to cause the video receiver to select the still picture, the examiner takes Official Notice that it is notoriously well known in the art to utilize targeted still pictures based on user characteristics.

These concepts are well known in the art and do not constitute a patentably distinct limitation, per se [MP.E.P. 2144.03].

Therefore, it would have clearly been obvious to one of ordinary skill in the art to modify Alexander to include the use targeted still based pictures based on user characteristics, as taught by Ching, for the benefit of providing a more desirable and effective still pictures for both the user and marketing entity.

7. Claim 14 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Alexander and Macrae as cited above in view of Flickinger et al. (US 2005/0210502).

As to claim 14, Alexander fails to explicitly disclose causing the video segment to be displayed on the display device comprises: causing the video segment to be displayed as the video segment is being received from the video receiver, wherein the executable instructions contain a trigger that coordinates a start of display of the video segment with a time that the video segment is received by the video receiver.

In analogous art, Flickinger discloses causing the video segment to be displayed on the display device comprises: causing the video segment to be displayed as the video segment is being received from the video receiver, wherein the executable instructions contain a trigger that coordinates a start of display of the video segment with a time that the video segment is received by the video receiver (Streaming media; there exists instructions which trigger or cue the 'start of display' of the streaming media. Since the media segments cannot be displayed before they are received, the 'start of display' is effectively 'coordinated' to display after receiving the segment [0062]; [0075]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Alexander to include triggers within the executable instructions that coordinate the start of display of the video segment, as taught by Flickinger, for the benefit of enabling the viewer to view the video before it is fully downloaded, as an advantage to systems with low or medium width channels (Flickinger—[0062]).

8. Claim 17 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Alexander (US 6,177,931) and Eldering (2002/0026638) in view of Thomas et al. (US 2005/0251824).

As to claim 17, Alexander fails to explicitly disclose the locally stored characteristics include channel subscription information.

In analogous art, Thomas discloses the locally stored characteristics include channel subscription information (since 'each user may set up a profile with a different set of favorite channels,' favorite channels, to which the user is subscribed to is effectively stored as well [0072]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Alexander to include channel subscription information, as taught by Thomas, for the benefit of facilitating the delivery of targeted content by providing an additional criteria (Thomas—[0069]).

9. Claims 19 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Alexander and Macrae as cited above in view of Ohkura et al. (6347400).

As to claim 19, Alexander fails to explicitly disclose the locally stored information includes historical information about pay per view purchases.

In analogous art, Ohkura discloses that the locally stored information includes historical information about pay per view purchases ([11, 60] to [12, 5]; [14, 66] to [15,2]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Alexander to include historical information about pay per view purchases in the locally stored information, as taught by Ohkura, for the benefit of facilitating the delivery of targeted content by providing an additional criteria.

As to claim 20, Ohkura discloses the historical information about pay per view purchases includes the identification of the last pay per view purchase ([11, 60] to [12, 5]; [14, 66] to [15,2]).

5. Claims 30 and 31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Alexander and Macrae as cited above in view of Knudson et al. (US 7,069,576)

Alexander is silent on including characteristics identifying which video segments have been displayed within a preceding period of time, and wherein selection of a particular segment is based on a determination that the particular segment has not already been displayed within a preceding period of time. In analogous art, Eldering teaches ads being shown a certain number of times interleaved with other ads, with the ads being counted every time the EPG is newly turned on (pg. 6, para. 0074). The phrase "certain number of times" clearly implies a limit on the number of displays of a

particular ad. In other words, the display of the ad is determined based on whether or how many times it has been shown before. In addition, Eldering states that ads may be displayed at a certain time of day. Given these disclosures, it is not an unexpected modification to display ads based on how many times an ad has shown in one day, i.e. a predetermined time period. One of ordinary skill would readily see the possible combination; Eldering expressly states that combinations are possible in para. 74.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Alexander by including characteristics identifying which video segments have been displayed within a preceding predetermined period of time, and wherein selection of a particular segment is based on a determination that the particular segment has not already been displayed within a preceding period of time as taught by Eldering in order to present different content to the user each time or after a certain number of times, thereby effectively targeting content without saturating the viewer.

Regarding claim 33, none of the cited art specifically refers to the time period as hours of a preceding week. However, official notice is taken that it is widespread and common in the television art that ad and program scheduling to run in weekly patterns. Given the disclosure by Eldering of determining ad displays based on the previous day, one of ordinary skill could readily extrapolate such a technique to be defined in terms of hours of a preceding week, simply to match preexisting programming patterns.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy R. Newlin whose telephone number is (571) 270-3015. The examiner can normally be reached on M-F, 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chris Kelley/
Supervisory Patent Examiner, Art Unit 2623

TRN